

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED
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2008 JUN 13 PM 3 38
PATRICK E. DUFFY, CLERK
BY _____
DEPUTY CLERK

BEVERLY DARRAH,

Plaintiff,

vs.

MONTANA RETAIL STORE EMPLOYEES
HEALTH AND WELFARE PLAN, ZENITH
ADMINISTRATORS, and
INTERNATIONAL REHABILITATION
ASSOCIATES, INC., DBA INTRACORP
OR CARE ALLIES,

Defendants.

CV-08-67-BLG-RFC-CSO

**FINDINGS AND RECOMMENDATIONS
OF U.S. MAGISTRATE JUDGE**

Defendant International Rehabilitation Associates, Inc. ("IHA") has filed a Motion for Judgment on the Pleadings of State Law Claims Based on ERISA Preemption (Court's Doc. No. 6). IHA did not comply with Local Rule 7.1(j)(1), which requires that the text of a motion "must state that other parties have been contacted and state whether any party objects to the motion."

In response, Plaintiff Beverly Darrah concedes that the motion is well taken, and "agrees that the Court may strike paragraph [4]¹ from her prayer for relief in the Complaint, and may also strike the ... jury request." *Pltf's Br. in Resp. to Deft's Mtn.*

¹In her response brief, Plaintiff states that paragraph 2 may be stricken. Upon review of the Complaint, it is clear to the Court that Plaintiff intended to state that paragraph 4 may be stricken, as that is the paragraph that discusses a claim for general damages for Plaintiff's "physical pain and mental anguish caused by Defendant's" actions.

(Court's Doc. No. 8). Darrah also represents that "had Defendant's counsel called to discuss these issues with Plaintiff's counsel, he would have agreed to Defendant's motion...." *Id. at 2.*

The unfortunate result is that IHA's counsel, Plaintiff's counsel, the Clerk of Court's Office, the Magistrate Judge, and the District Judge all will devote time to a matter that could have been quickly resolved with a simple phone call. Counsel for IHA is strongly advised to comply with Local Rule 7.1(j)(1) in future matters.

No objection having been stated by Plaintiff's counsel, **IT IS RECOMMENDED** that the Motion for Judgment on the Pleadings of State Law Claims Based on ERISA Preemption (Court's Doc. No. 6) be GRANTED and that paragraph 4 from the prayer for relief and the jury request be STRICKEN from Plaintiff's Complaint.

NOW, THEREFORE, IT IS ORDERED that the Clerk shall serve a copy of the Findings and Recommendations of the United States Magistrate Judge upon the parties. The parties are advised that pursuant to 28 U.S.C. § 636, any objections to the findings and recommendation portion must be filed with the Clerk of Court and copies served on opposing counsel within ten (10) days after receipt hereof, or objection is waived.

DATED this 13th day of June, 2008.



Carolyn S. Ostby
United States Magistrate Judge